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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

Rate Regulation)

MM Docket 92-266

REPLY TO OPPOSITIONS

Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby replies to two of the oppositions filed against its Petition for Reconsideration of the Commission's Report and Order and Further Notice of Proposed Rulemaking, released May 3, 1993, in the above-captioned proceeding ("Report and Order").^{1/}

Cablevision emphatically rejects GTE's obviously self-serving argument that the Commission's strict regulatory scheme for equipment is necessary to promote a competitive marketplace. To the contrary, the imposition of burdensome regulation on cable equipment alone will hinder marketplace development. It will inhibit innovation in the design and manufacture of advanced subscriber equipment, and, at a time when the cable, telephone and computer industries are rapidly converging, cable will be placed at a competitive disadvantage in the growing marketplace for advanced consumer electronics.

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^{1/} Petition for Reconsideration, Cablevision Systems Corporation (filed June 21, 1993) ("Cablevision Petition").

Just as the market for telephone customer premises equipment ("CPE") has flourished since its deregulation more than a decade ago, reducing the regulation of cable equipment as Cablevision has proposed will yield similar results. In turn, the development of advanced subscriber equipment will enable cable operators to unlock the full potential of their broadband networks to serve as a multi-purpose, interactive telecommunications infrastructure.

Contrary to the assertion of the Center for Media Education ("CME"), Cablevision does not call for the elimination of part-time leasing of commercial access channels. Rather, Cablevision asked the Commission to revise its "implicit fee" rate formula to adequately compensate operators for part-time use and proposed a workable solution that would not result in prohibitively high prices for leased access use.

I. The Commission's Stringent Regulatory Scheme for Equipment Will Stifle Innovation and Competition in the Marketplace

In its Opposition, GTE asserts that the Commission's overbroad definition of "basic" equipment and its decision to subject virtually all equipment to the "actual cost" standard will somehow lead to greater competition in the cable subscriber equipment marketplace.^{2/} GTE unabashedly bases its argument on the purportedly analogous premise that prior regulation of CPE

^{2/} See GTE's Opposition to Petitions for Reconsideration at 17-18 (filed July 21, 1993) ("GTE's Opposition").

led to competition in the telephone equipment market.^{3/} This premise is blatantly wrong. CPE was deregulated over a decade ago upon a finding that continued regulation would *hinder* the development of a competitive marketplace.^{4/} Since deregulation, the CPE market has flourished, as GTE appears to recognize.^{5/}

GTE, and the Commission, fail to recognize that if the promise of a multi-purpose, interactive cable infrastructure is to be fully realized, the cable industry needs the equipment pricing flexibility that the Commission long ago afforded to GTE and others in the telephone industry. Rather than provide cable with any measure of flexibility, however, the Commission has unlawfully and unwisely adopted a strict regulatory scheme that will have the perverse effect of stifling innovation. Subject to the straightjacket of "actual costs," cable operators and equipment manufacturers will have significantly less incentive to add the functionality and value to the subscriber equipment that is needed to exploit the full interactive potential of cable's broadband network.^{6/}

GTE's support for imposing burdensome regulation on equipment furnished by cable alone appears particularly self-

^{3/} See id. at 17.

^{4/} See Second Computer Inquiry, 77 FCC 2d 384, 441 (1980).

^{5/} See GTE's Opposition at 17.

^{6/} In the absence of regulation, cable companies are joining with computer companies and others to begin the innovative process of transforming cable converters into "smart" equipment with enhanced interactive capabilities. See Cablevision Petition at 6.

serving in view of the emerging convergence of cable, telephone and computer technology. As Cablevision explained in its Petition, the broad application of the "actual cost" standard to all cable-provided subscriber equipment will impede the cable industry's ability and incentive to compete to become a provider of sophisticated subscriber terminal devices.^{7/} Put simply, cable will be disadvantaged in the growing advanced consumer electronics marketplace.

On reconsideration, the Commission can and should narrow the scope of equipment subject to the "actual cost" standard to that equipment provided to basic-only subscribers. Consistent with the discretionary nature of "cable programming services," equipment provided to customers of such services should be subject to a less stringent regulatory standard that seeks only to protect consumers against excessive "unreasonable" rates for a bundled package of services and equipment. Converters that incorporate the functionalities of CPE should be totally exempt from rate regulation.

Narrowing the scope of equipment subject to the "actual cost" standard is consistent with the statute and will serve to enhance the public interest, for reasons fully stated in Cablevision's Petition.^{8/} Pricing flexibility will encourage innovation in the design and development of advanced converters and other subscriber equipment, which in turn will provide

^{7/} Id.

^{8/} See id. at 4-12.

subscribers with more choice. At the same time, the Commission's complaint process will protect consumers against any risk of excessive equipment prices.

II. The Commission Should Not Eliminate Part-time Use of Leased Commercial Access Channels, But Should Revise Its Rate Formula to Ensure that Operators are Adequately Compensated for Such Use

The Opposition filed by CME^{9/} misconstrues Cablevision's concern with the Commission's "implicit fee" formula for determining the maximum reasonable rates for part-time use of leased commercial access channels. In its Petition, Cablevision did not argue for the elimination of part-time leased access use, as CME states.^{10/} Rather, Cablevision requested the Commission to revise its "implicit fee" formula to ensure operators a reasonable return on part-time use of leased access capacity.

As Cablevision explained, the "implicit fee" prescribed in the Report and Order is based on full-time use of a channel by non-leased access programmers, which guarantees the operator a fixed revenue stream. The Commission's decision to merely pro-rate this implicit fee to determine rates for part-time use is unlikely to permit the operator to recover the costs of providing the channel, since part-time use will render the channel unavailable for full-time use. The artificially low rate that

^{9/} Opposition to Petitions for Reconsideration of Center for Media Education, Association of Independent Video and Filmmakers, National Association of Artists' Organizations, National Alliance for Media Arts and Culture (filed July 21, 1993) ("CME Opposition").

^{10/} See CME Opposition at 9-10.

results from prorating the implicit fee for full-time use will adversely affect the financial condition of cable systems and, thus, the quality of cable service, in violation of the statute.^{11/}

To compensate operators adequately for part-time use of leased access channels, Cablevision urged the Commission to consider the formula that it has adopted, which charges leased access users a penny per subscriber per hour. For a system with 10,000 subscribers, this formula results in a rate of \$100.00 per hour, for example. While such a rate might not ensure that each channel is being utilized on a full-time basis, it would ensure operators a reasonable return on part-time leased access use. Contrary to CME's assertion, moreover, the proposed rate would not be prohibitively high. As Cablevision recognized and proposed in its Petition, the per subscriber charge could be reduced for systems with more than 100,000 subscribers.^{12/}

^{11/} See Cablevision Petition at 13-14. This artificially low rate also may cause programmers to migrate to leased access channels, undermining the revenues an operator earns from advertising and from home shopping network commissions. See id. at 14-15.

^{12/} See id. at 16. CME assumed a total of 1,875,610 subscribers in Philadelphia, and then used the penny-per-subscriber per hour formula to produce its absurd hypothetical rate of \$975,317 for one hour per week for one year of leased access use. See CME Opposition at 11 n.7. Not only does CME overlook Cablevision's suggestion of a reduced leased access rate for larger systems, it appears to have confused the total population of the city with the number of cable subscribers there.

CONCLUSION

Consistent with the foregoing and for the reasons stated therein, the Commission should grant Cablevision's Petition for Reconsideration and should reject the Oppositions thereto filed by GTE and CME.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I, Leslie B. Calandro, do hereby certify that copies of the foregoing Reply to Oppositions of Cablevision Systems Corporation were served on the following by either hand delivery or first class mail, postage prepaid, this 4th day of August, 1993.

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